

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

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TERESA THOMPSON,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 16-722V

Special Master Christian J. Moran

Filed: January 29, 2018

Stipulation; tetanus-diphtheria (“Td”);
shoulder injury.

Maximillian J. Muller, Muller Brazil LLP, Dresher, PA, for Petitioner;
Sarah C. Duncan, United States Dep’t of Justice, Washington, DC, for Respondent.

UNPUBLISHED DECISION¹

On January 24, 2018, the parties filed a joint stipulation concerning the petition for compensation filed by Teresa Thompson on June 21, 2016. Petitioner alleged that the tetanus-diphtheria (“Td”) vaccine she received on June 29, 2015, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a), caused her to suffer a right shoulder injury. Petitioner further alleges that she suffered the residual effects of this injury for more than six months. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her condition.

Respondent denies that the Td vaccine caused petitioner to suffer a right shoulder injury or any other injury.

¹ The E-Government Act, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Nevertheless, the parties agree to the joint stipulation, attached hereto. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- a. A lump sum payment of \$25,000.00 in the form of a check payable to petitioner.**
- b. A lump sum payment of \$8,538.60, which represents reimbursement of a Medicaid lien, in the form of a check payable jointly to petitioner and**

**First Recovery Group, LLC
File No. 746411-116716
P.O. Box 771932
Detroit, MI 48277-1932**

Petitioner agrees to endorse this check to First Recovery Group, LLC.

These amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 16-722V according to this decision and the attached stipulation.²

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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No. 16-722V
Special Master Moran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Teresa Thompson, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of a tetanus¹ vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).

2. Petitioner received the Td immunization on June 29, 2015.

3. The vaccination was administered within the United States.

4. Petitioner alleges that she suffered right shoulder injuries as a result of receiving the Td vaccine, and experienced the residual effects of this injury for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her condition.

6. Respondent denies that the Td vaccine caused petitioner to suffer right shoulder

¹ Medical records reflect that petitioner received the tetanus-diphtheria ("Td") vaccine.

injuries or any other injury.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$25,000.00 in the form of a check payable to petitioner;
and
- b. A lump sum of \$8,538.60, which amount represents reimbursement of a Medicaid lien, in the form of a check payable jointly to petitioner and

First Recovery Group, LLC
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Petitioner agrees to endorse this check to First Recovery Group, LLC.

Payments made pursuant to paragraphs 8(a) and 8(b) represent compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable

under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursed expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the Td vaccination administered on June 29, 2015, as

alleged by petitioner in a petition for vaccine compensation filed on or about June 21, 2016, in the United States Court of Federal Claims as petition No. 16-722V.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the Td vaccine caused petitioner to have right shoulder injuries or any other injury.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

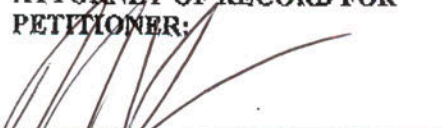
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Respectfully submitted,


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TERESA THOMPSON


ATTORNEY OF RECORD FOR
PETITIONER:


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Dated: 1/24/2018